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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,339	02/22/2005	Daniel Ballin	36-1888	3643
23117 7590 08/13/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
KIM, EUNHEE				
ART UNIT		PAPER NUMBER		
2123				
MAIL DATE		DELIVERY MODE		
08/13/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,339

Applicant(s)

BALLIN ET AL.

Examiner

Eunhee Kim

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25 and 27-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 25 and 27-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. Claims 25 and 27-32 are presented for examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 25 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers (WO 99/57900), in view of Sakaguchi (US Patent No. 6,310,627).

Myers teaches (Claims 25, 28, and 31) a method and a system of object model generation (Abstract), comprising the steps of:

a) storing a set of weight values expressing a first object model of a first type as a weighted sum of a plurality of predefined object models, each of the first type, wherein the object models of the first type comprise an avatar (Fig. 1-4, Page 10 lines 19-30, Page 11 lines 22-24, Page 40 line 6-35, Page 41 lines 1-35, Page 48 lines 20-30, Page 49 lines 1-14);

b) applying the set of weight values to a plurality of predefined models of a second type, wherein the object models of the second type comprise clothing models, to generate an output object model of the second type corresponding to a weighted sum of the predefined models of the second type wherein the output object model of the second type comprise a model of clothing garments in the shape which the garments would assume when applied to the avatars (Fig. 1-4, Page 10 lines 19-30, Page 11 lines 22-24, Page 40 line 6-35, Page 41 lines 1-35, Page 48 lines 20-30, Page 49 lines 1-14); and

c) displaying to user an avatar represented by the first object model of the first type and an article of clothing represented by said output object model of the second type.

Myers fails to teach displaying to a user an avatar simultaneously with an article of clothing (Fig. 1-4, Page 10 lines 19-30, Page 11 lines 22-24, Page 40 line 6-35, Page 41 lines 1-35, Page 48 lines 20-30, Page 49 lines 1-14).

Myers and Sakaguchi are analogous art because they are all related to an image performance (Fig. 7).

Therefore, it would have been obvious to one of ordinary skill in the art of at the time the invention was made to have included simultaneous display of images of Sakaguchi, in the method of an enhanced user defined image system of Myers because simultaneous display of images is a well known process to a skilled artisan in a method of an enhanced user defined image system, and Sakaguchi teaches advantages of the system that provides the monitoring of the virtual try-on states qualitatively (Col. 1 lines 30-36, Col. 2 lines 9-12).

Myers teaches (Claims 27 and 32) wherein the object models of the first or second type each comprise a plurality of co-ordinates representing vertex points in a virtual space (Page 10 lines 19-30, Page 11 lines 22-24, Page 40 line 6-35, Page 41 lines 1-35, Page 48 lines 20-30, Page 49 lines 1-14);

(Claim 29) transmitting information relating to a first object model of a first type to an object model server (Page 45 lines 20-25, Page 49 lines 1-14); and

(Claim 30) wherein the transmitted information is the first object model itself (Page 45 lines 20-25, Page 49 lines 1-14).

Response to Arguments

4. Applicant's arguments filed 04/29/2008 have been fully considered but they are not persuasive.

Applicants have argued that:

Even if true, the Examiner's assertion provides no basis for the conclusion that Myers discloses defining an avatar "by a set of weight values expressing a first object model of a first type." Nor does the Examiner's assertion and citations provide a basis for the conclusion that Myers teaches or suggests that "the first object model is expressed as a

weighted sum of a plurality of predefined object models." In fact, Myers does not teach or suggest any of the above discussed claimed features of Applicants' invention, and the Examiner has failed to cite to a single figure or passage anywhere in Myers that supports the assertion that Myers discloses (or even suggests) these claim features. Indeed, none of the Examiner's cited portions of Myers (see pages 3-5 of the Office Action) even use the terms "weight values" "weighted sum" or "applying the set of weight values" in describing its embodiments.

As far as the allegation goes that Myers does not disclose defining an avatar "by a set of weight values expressing a first object model of a first type.", nowhere has the applicant pointed out the support for the limitation "a set of weight" in the instant application. The specification does not clearly define what "a set of weight" is or a defined meaning of the term. Further, according to MPEP 2111, claims must be given their broadest reasonable interpretation. Therefore, the examiner takes position that avatar model of Myers takes into consideration a set of weight.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eunhee Kim whose telephone number is 571-272-2164. The examiner can normally be reached on 8:30am-5:00pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Eunhee Kim/
Examiner, Art Unit 2123

/Paul L Rodriguez/
Supervisory Patent Examiner, Art Unit 2123